

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 12

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DAN CABANA

Appeal No. 1998-2421
Application 08/668,340¹

ON BRIEF

Before CALVERT, MEISTER and NASE, Administrative Patent Judges.

CALVERT, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1 to 11, all the claims in this application.

The claims on appeal are drawn to a system and method for shipping and

¹ Application for patent filed June 25, 1996.

displaying small articles, and are reproduced in the appendix to appellant's brief.

The references applied in the final rejection are:

Samsing	3,265,216	Aug. 9, 1966
Stollberg et al. (Stollberg)	4,184,625	Jan. 22, 1980
Christie	4,363,405	Dec. 14, 1982
Fenton et al. (Fenton)	5,249,668	Oct. 5, 1993

The claims stand finally rejected under 35 U.S.C. § 103 as being unpatentable over the following combinations of references:

- (1) Claims 1 to 8 and 11, Christie in view of Samsing and Stollberg; and
- (2) Claims 9 and 10, Christie in view of Samsing, Stollberg and Fenton.

The bases of these rejections are set forth on pages 4 to 6 of the examiner's answer.

After considering the record² in light of the arguments presented in appellant's brief and reply brief, and in the examiner's answer, we conclude that the rejections will not be sustained.

With regard to claim 1, our conclusion is based on the fact that, even if the references were combined as proposed by the examiner, the resulting structure would not

² On page 6, line 4 of the specification, we note that "box" should be --rack--.

have a rack which was “free-standing,” as claimed. The examiner states on page 6 of the answer that Samsing’s rack 29 has a base 30, 31 which is supported “prior of [sic: to] being folded into the box (Figure 3).” However, Figure 3 of Samsing merely shows the rack as it is prior to assembly into the stand, as shown in Figures 4 and 7. Thus, assuming arguendo that it would have been obvious in view of Samsing to modify the system of Christie so that Christie’s “rack” (clip) 28 would extend to the bottom of the box 24 and include a support base, the thus-modified rack would not be “free-standing” because, in accordance with Samsing’s teaching, one of ordinary skill would attach the base of the rack to the floor of the box. We find no teaching in Samsing, or in either of Stollberg or Fenton, which would suggest to one of ordinary skill that the rack could or should be free-standing. The rejections of apparatus claims 1 to 10 will therefore not be sustained.

As for method claim 11, we agree with appellant (brief, pages 12 to 13) that even if Christie were modified in view of Samsing and Stollberg, one of ordinary skill would not have found it obvious to place the articles on the rack and then place the rack in the box, as claimed, because, in accordance with Samsing’s disclosure, the rack must be secured to the box before the articles are placed on it (col. 2, lines 50 to 55), and it is difficult to see how these steps could be performed in reverse order, as claim 11 requires.

The rejection of claim 11 will not be sustained.

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Conclusion

The examiner's decision to reject claims 1 to 11 is reversed.

REVERSED

IAN A. CALVERT)	
Administrative Patent Judge)	
)	
)	
)	BOARD OF PATENT
JAMES M. MEISTER)	
Administrative Patent Judge)	APPEALS AND
)	
)	INTERFERENCES
)	
JEFFREY V. NASE)	
Administrative Patent Judge)	

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